

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
NORTHWEST PIPE & STEEL, INC.,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 468

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged open-burning violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 25th day of January, 1974, at Lacey, Washington; and appellant Northwest Pipe & Steel, Inc. appearing through its president, Jay Wax and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being W. A. Gissberg (presiding), Mary Ellen McCaffree and Walt Woodward; and the Board having considered the sworn testimony,

1 exhibits, records and files herein and having entered on the 4th day of
2 February, 1974, its proposed Findings of Fact, Conclusions of Law and
3 Order, and the Board having served said proposed Findings, Conclusions
4 and Order upon all parties herein by certified mail, return receipt
5 requested and twenty days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the
8 premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 4th day of
11 February, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 2nd day of March, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 Walt Woodward
17 WALT WOODWARD, Chairman

18 W. A. Gissberg
19 W. A. GISSBERG, Member

20 Mary Ellen McCaffree
21 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

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Mr. Jay Wax, President
Northwest Pipe and Steel, Inc.
P. O. Box 11247
Tacoma, Washington 98409

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai & McGoffin
818 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution
Control Agency
410 West Harrison Street
Seattle, Washington 98119

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U.S. mail.

Larène C. Barlin
LARENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 From testimony heard and exhibits examined, the Pollution Control
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 A plume of white smoke arose from a smoldering outdoor fire in
6 appellant's scrap metal yard at South M Street and South Tacoma Way,
7 Tacoma, Pierce County, for at least five minutes about 9:50 a.m., on
8 September 26, 1973. The smoke came from burning electrical insulation
9 in a transformer which had caught on fire when appellant's workman used
10 a cutting torch on it.

11 II.

12 The workman, not deeming the fire of sufficient import to use
13 nearby fire extinguishers to smother the blaze, poured water and dirt
14 on the fire. Under the impression this was extinguishing the fire,
15 the workman had gone a few feet distant to assist another workman.

16 III.

17 An inspector on respondent's staff, noting the plume from two
18 blocks away, served Notice of Violation No. 8228, citing Section 9.02
19 of respondent's Regulation I. Subsequently, and in connection therewith,
20 respondent served on appellant Notice of Civil Penalty No. 1199 in the
21 amount of \$50.00, the subject of this appeal.

22 IV.

23 On April 10, 1973, as the result of a somewhat similar alleged
24 violation, respondent served on appellant Notice of Violation No. 7409,
25 but no civil penalty was invoked.

26
27 FINDINGS OF FACT,
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1 V.

2 Section 9.02(b)(4) of respondent's Regulation I makes it unlawful
3 to "allow" an outdoor fire for the purpose of salvage of materials.
4 Section 3.29 of respondent's Regulation I authorizes a civil penalty of
5 not more than \$250.00 for any violation of Regulation I.

6 VI.

7 Appellant's employees are instructed by appellant to extinguish
8 promptly all fires accidentally started in metal cutting operations but
9 appellant deems it "senseless" to employ fire extinguishers "every
10 time, out in the open."

11 VII.

12 Any Conclusion of Law hereinafter recited which should be deemed
13 a Finding of Fact is hereby adopted as such.

14 From these Findings, the Pollution Control Hearings Board comes
15 to these

16 CONCLUSIONS

17 I.

18 The crux of this matter is the method employed by appellant's
19 workmen in extinguishing cutting-torch fires. There is no question
20 but what they act promptly to extinguish such fires. For some reason--
21 perhaps the cost or perhaps the inconvenience--they are not instructed,
22 nor do they use, commercial, flame-smothering fire extinguishers, but
23 rely, instead, on water and dirt. Here, the Board believes, appellant
24 is exercising a judgment on how quickly the pollution-causing smoke of
25 a fire should be eliminated. However, respondent's Regulation I does
26 not give to appellant that judgment option. The rule, which the Board

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 must sustain, is not to "allow" outdoor fires, even for a few minutes,
2 in the salvage of materials.

3 II.

4 Having reached this Conclusion, the Board, therefore, must find
5 that appellant was in violation of respondent's Regulation I on
6 September 26, 1973, as cited in Notice of Violation No. 8228.

7 III.

8 Notice of Civil Penalty No. 1199, while reasonable, can be
9 suspended to give appellant an opportunity to profit by this Board's
10 warning on the prompt use of flame-smothering commercial fire
11 extinguishers.

12 IV.

13 Any Finding of Fact which should be deemed a Conclusion of Law is
14 hereby adopted as such.

15 Therefore, the Pollution Control Hearings Board makes this

16 ORDER

17 The appeal is denied, but the \$50.00 civil penalty is suspended
18 pending no similar violation for a period of six months from the date
19 this Order becomes final.

20 DONE at Lacey, Washington this 4th day of February, 1974.

21 POLLUTION CONTROL HEARINGS BOARD

22 Walt Woodward
23 WALT WOODWARD, Chairman

24 W. A. GISSBERG, Member

25 Mary Ellen McCaffree
26 MARY ELLEN McCAFFREE, Member

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER